

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

HOLLY WETHINGTON, )  
individually and as next )  
friend for M.W., a minor, )

Plaintiffs, )

$$\mathbf{v}_i$$

Case No. CIV-14-899-D

ROBERT SWAINSON, d/b/a/ )  
PEGASUS AIRSPORT CENTER. )

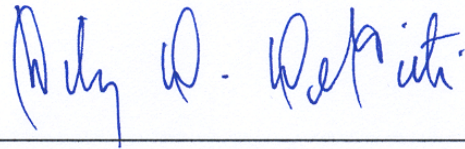
Defendant. )

## ORDER

Before the Court is Defendant's Motion to Dismiss [Doc. No. 39], to which Plaintiffs have responded [Doc. No. 40]. The only cognizable contention raised in Defendant's motion is his argument that this suit should be dismissed since Plaintiff M.W. has now attained the age of eighteen. The Court, however, finds the more prudent option would be to amend the caption to remove Plaintiff Holly Wethington's next friend status to reflect that Plaintiff has attained the age of majority. *See, e.g., Cavanaugh ex rel. Cavanaugh v. Providence Health Plan*, 699 F. Supp. 2d 1209, 1214 (D. Or. 2010). The remainder of Defendant's contentions either have been previously raised in his Motion for Summary Judgment and *Daubert* motion, or go to the merits of the action and are thus untimely. Therefore, the Court will neither recite nor consider those arguments.

Accordingly, Defendant's Motion to Dismiss [Doc. No. 39] is **DENIED** as set forth herein. The clerk is directed to substitute Mackenzie Wethington as plaintiff in place of Holly Wethington, only in her status as Next Friend. The caption shall so reflect throughout the duration of these proceedings.

IT IS SO ORDERED this 11<sup>th</sup> day of December, 2015.



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TIMOTHY D. DEGIUSTI  
UNITED STATES DISTRICT JUDGE